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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,419	11/20/2001	John Dyke	B754.12-0001	3751

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KINNEY & LANGE, P.A.  
THE KINNEY & LANGE BUILDING  
312 SOUTH THIRD STREET  
MINNEAPOLIS, MN 55415-1002

EXAMINER

FELTEN, DANIEL S

ART UNIT PAPER NUMBER

3624

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/991,419

Applicant(s)

DYKE, JOHN

Examiner

Daniel S Felten

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. The invention in the body of the claim must recite technology. If the invention in the body of the claim is not tied to technological art environment or machine, the claim(s) is/are non-statutory.

Claims 1-7, 9,10, 12-15 and 17-19 are directed to merely human mental computation and/or processes that can be performed by a person manually, and thus is not considered a useful technological art as contemplated by the constitution [see *Musgrave*, 431 F.2d at 893, 167 USPQ at 289-90 cited with approval in *Schrader*, 22 F.3d at 297, 30 USPQ2d at 1461; see also *Ex Parte Bowman*, 61 USPQ2d 1665, 1671 (BD Pat. App & Inter 2001) (Unpub)\*]. Also note MPEP 2106 IV 2(b). The abstract idea does not become technological art by reciting in the preamble, for example "...a buyer-driven electronic marketplace..." because the recitation in the invention in the body of the claim manipulates an abstract idea without use of technology to produce a useful, concrete and tangible result.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "a type" in the claims is considered indefinite because one of ordinary skill in the art would not be able to determine the scope of such a term as it is used in the specification [see *In re Dossel*, 115 F.3d 942, 946, 42 USPQ2d 1881, 1884 (Fed. Cir. 1997)].

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (US 5,794,207).

Walker discloses, as in claims 1 and 9, a buyer-driven having a method for operating a buyer-driven electronic marketplace in which a product is traded from a seller to a purchaser, the method comprising:

Receiving and having a means for receiving a request to purchase goods from a buyer, the request specifying a type of goods (see Walker, fig. 1-5, Abstract col. 11, ll. 41+; col. 14, ll. 53+; and col. 15, ll. 46+; and col. 16, ll. 63+)

identifying and having a means for identifying sellers that generally stock the specified type of goods (see Walker, col. 7, ll. 66 to col. 8, ll. 2; and col. 13, ll. 11-22)

communicating and having a means for communication the request to purchase goods to the identified (see Walker, Abstract, col. 13, ll. 1-10),

sellers, receiving offers and having a means to receive offers to sell the specified goods to the buyer, each of the offers specifying a price of the offered goods (see Walker, col. 16, ll. 12- 45);

communicating the received offers to the buyer (see Walker, "counter offer", col. 16, ll. 39-45);

receiving a product order from the buyer, the product order corresponding to at least one of the received offers (see Walker, col. 15, ll. 45+);

communicating the product order to the seller', and receiving an order confirmation from the seller (see Walker, col. 15, ll. 45+).

Re claims 2 and 10, wherein the request to purchase goods specifies certain characteristics of the specified goods (see Walker, col. 16, ll. 12+).

Re claims 3 and 11, wherein identifying sellers that generally stock the specified type of goods composes: identifying sellers that generally identifying from a seller database sellers that generally stock the specified type of goods (see Walker, col. 7, ll. 66+; col. 20, ll. 30+).

Re claim 4 and 12, wherein each of the offers to sell specifies certain characteristics of the offered goods (see Walker, col. 16, ll. 12+).

Re claim 5 and 13, arranging for payment for the sold goods by the buyer to the seller; and arranging for shipment of the sold goods from the seller to the buyer (see Walker, col. 13, ll. 50+).

Re claim 6 and 14, wherein an identity of the buyer is not conveyed to the seller until receipt of the Order confirmation (see Walker, col. 7, ll. 52+),

Re claim 7 and 15, wherein an identity of the seller is not conveyed to the buyer until receipt of the order confirmation (see Walker, col. 7, ll. 52+),

Re claim 8 and 16, wherein the buyer-driven electronic marketplace is implemented over the Internet (see Walker, Abstract),

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US 5,794,207).

Walker discloses all the elements and/or components that meet the claim limitation but fails to disclose that the a method is specifically for operating a buyer-driven electronic parts exchange in which a part is traded from a seller to a purchaser, wherein the part exchange is an agricultural machinery parts exchange or an

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automotive parts exchange. Walker discloses various examples of a goods exchange wherein a Identification number is used (see specifically Industrial commodity CPO, col. 32, ll. 3+). Since Walker shows a rather efficient goods and services exchange used over the Internet, it would have been obvious for an artisan of ordinary skill in the art to recognize that Walker could be easily modified to into a notoriously old and well know agricultural machinery part exchange and/or an automotive exchange having no unexpected results over Walker and being within the ordinary skill in the art. Thus an artisan would have recognized the efficiency and flexibility of Walker to perform bilateral exchange over the Internet and have sought to use Walker to perform different remote exchange transaction involving goods and services. Thus such a modification would have been considered an obvious expedient well within the ordinary skill in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DSF  
August 19, 2004

Daniel S Felten  
Examiner  
Art Unit 3624



VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3800